

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6035 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and

MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

RANJITSINH VAJESINH CAHWDA

Appearance:

MR PV NANAVATI for Petitioner

MR MTM HAKIM for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/12/1999

ORAL JUDGEMENT

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, wherein the only appellant is the Insurance Company (original opponent no.3).

2. Learned Counsel for the appellant seeks to

address us on a question as to whether the vehicle in question was involved in the accident at all. Obviously, this is a contention on a question of fact and is not one of the statutory defences available to an Insurance Company.

3. The Supreme Court has laid down the specific principle in the case of SHANKARAYYA AND ANR. V. UNITED INDIA INSURANCE CO.LTD reported in AIR 1998 SC 2968, that before an Insurance Company can be permitted to take up defences which are available to the owner and driver of the vehicle, an application has to be made to the Tribunal under Section 170 of the Motor Vehicles Act, 1988, and an order with reasons be obtained on the application. In short, even if the Tribunal grants permission under Section 170, it cannot be without application of mind, and the grant of such permission in favour of the Insurance Company must be supported by reasons.

This decision of the Supreme Court has further been followed by a Division Bench of this Court in the case of UNITED INDIA INSURANCE CO.LTD V. HETALBHAI C. BAGADIA reported in 1999 (1) G.L.H. 539.

4. On the facts of the case, we find that the Insurance Company had given an application to the Tribunal under Section 170 of the said Act, that this application was not endorsed by any other party either consenting or objecting to the same and the Court has merely passed an order " recorded ". We do not see this order of the Tribunal as an order granting permission contemplated by Section 170. Furthermore, it is not an order supported by reasons. Learned Counsel for the appellant in this context submitted that it is as a consequence of this order, that the Tribunal permitted the Insurance Company to cross-examine the claimant. From this, learned Counsel for the appellant wants us to draw an inference, that the application was in fact and substance granted. Even if such an assumption could be drawn, which we are not prepared to do, the order is still an order without reasons. This order, therefore, fails to meet the test laid down in Shankarayya's case.

5. In the premises aforesaid, the Insurance Company cannot be permitted to take up non statutory defences and to challenge the impugned judgment and award on merits. This appeal is therefore summarily dismissed. The amount deposited in the Registry by the appellant shall be transmitted to the Tribunal forthwith.

stanley-ybb